

# Exhibit 51

LEE W. POYE, on 09/25/2020  
WILLIE MCNEAL, JR., vs AUTOZONE, INC., et al.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Coordinated Proceeding )  
Special Title (Rule 3.550) )

LAOSD ASBESTOS CASES )  
\_\_\_\_\_ )

WILLIE MCNEAL, JR., )

Plaintiff, )

vs. )

AUTOZONE, INC., et al., )

Defendants. )  
\_\_\_\_\_ )

Case No. BC698965

**Certified Transcript**

(Pages 1 - 137)

TELEPHONIC DEPOSITION OF EXPERT WITNESS

LEE W. POYE

FRIDAY, SEPTEMBER 25, 2020

Reported by: PAIGE I. HUTCHINSON, CA CSR No. 13459,  
TX CSR No. 11222, WA CCR No. 3336

LEE W. POYE, on 09/25/2020  
WILLIE MCNEAL, JR., vs AUTOZONE, INC., et al.

Pages 122–125

<p style="text-align: right;">Page 122</p> <p>1 <b>asbestos using PLM without a heavy liquid separation</b></p> <p>2 <b>preparation method in cosmetic talc?</b></p> <p>3 A. I have no recollection of Dr. Longo ever</p> <p>4 reporting finding chrysotile prior to his adoption of</p> <p>5 the Colorado School of Mines dual heavy liquid</p> <p>6 separation, no.</p> <p>7 <b>Q. When you say that it recently published round</b></p> <p>8 <b>robin, what are you referring to?</b></p> <p>9 A. The asbestos in talc -- USP asbestos in talc</p> <p>10 Stimuli Part 2.</p> <p>11 <b>Q. Okay. And that's the document that was very</b></p> <p>12 <b>recently published in, what, August or September?</b></p> <p>13 A. It's kind of funny. I -- September 4th, I</p> <p>14 believe, was the date. I had to ask USP if it's</p> <p>15 actually been published, and they're, like, yeah, we</p> <p>16 published it back on the 4th. They just didn't tell</p> <p>17 us.</p> <p>18 <b>Q. All right. Let me ask you a little bit about</b></p> <p>19 <b>that document.</b></p> <p>20 <b>First off, were there any medical</b></p> <p>21 <b>professionals that were a part of the creation of that</b></p> <p>22 <b>document, to your knowledge?</b></p> <p>23 A. We weren't doing any health effects that I'm</p> <p>24 aware of, so no, I'm not aware of any MDs that were</p> <p>25 included, no.</p>	<p style="text-align: right;">Page 124</p> <p>1 microscopy -- electron microscopy -- scanning and/or</p> <p>2 transmission electron microscopy.</p> <p>3 <b>Q. And you hold the opinion, correct, that</b></p> <p>4 <b>transmission electron microscopy is critical in the</b></p> <p>5 <b>area of analyzing cosmetic talc for the presence of</b></p> <p>6 <b>asbestos; true?</b></p> <p>7 A. Especially for chrysotile.</p> <p>8 <b>Q. Do you know when the TEM portion is set to be</b></p> <p>9 <b>published or have any estimate as to when it will be</b></p> <p>10 <b>published?</b></p> <p>11 A. Gosh, I hope we can finish it in the next five</p> <p>12 years, but it's a slog. Let me tell you.</p> <p>13 <b>Q. Do you honestly believe that it could be</b></p> <p>14 <b>another five years? Is that likely?</b></p> <p>15 A. Would not surprise me.</p> <p>16 <b>Q. Okay. So all this on -- strike that. I don't</b></p> <p>17 <b>want to say "all"; that's demeaning, probably, to the</b></p> <p>18 <b>work that was put into it.</b></p> <p>19 <b>But the document that was published</b></p> <p>20 <b>September 4th, "The Modernization of Asbestos Testing</b></p> <p>21 <b>in USP Talc, Part 2" is limited to XRD and polarized</b></p> <p>22 <b>light microscopy; true?</b></p> <p>23 A. That is correct.</p> <p>24 <b>Q. Okay.</b></p> <p>25 <b>All right. I am going to save any additional</b></p>
<p style="text-align: right;">Page 123</p> <p>1 <b>Q. So nothing from that document, in your</b></p> <p>2 <b>opinion, should be taken to mean anything to do with</b></p> <p>3 <b>health or safety; correct?</b></p> <p>4 A. No, sir. And I'm certainly not an MD or a --</p> <p>5 to talk about health effects.</p> <p>6 <b>Q. Okay. What involvement, if any, did you have</b></p> <p>7 <b>specifically with the document? By that I mean, was</b></p> <p>8 <b>there certain sections that you actually authored or</b></p> <p>9 <b>had more involvement in than others?</b></p> <p>10 A. Absolutely. I was one of the round robin</p> <p>11 participants in the study that I alluded to earlier,</p> <p>12 had numerous polite yet heated negotiations with my board</p> <p>13 members, and that is the cumulation of five years of</p> <p>14 blood, sweat, and tears going into that to get to that</p> <p>15 point. And next we're starting the TEM portion.</p> <p>16 <b>Q. So when you say TEM portion, what do you refer</b></p> <p>17 <b>to this as, the portion that was just published?</b></p> <p>18 A. The asbestos in talc Stimuli Part 2</p> <p>19 essentially the -- probably the most notable -- what's</p> <p>20 the term? -- accomplishment of that -- of our panel</p> <p>21 over the last five years, was the creation of an</p> <p>22 analytical method for the determination of asbestos in</p> <p>23 talc by polarized light microscopy. And I think XRD is</p> <p>24 in there as well, and then part 3 with add, if deemed</p> <p>25 worthy and necessary, transmission electron</p>	<p style="text-align: right;">Page 125</p> <p>1 <b>questions on this for another day.</b></p> <p>2 <b>And is there any other areas of opinions that</b></p> <p>3 <b>you have specific to McNeal that we haven't discussed</b></p> <p>4 <b>today or that's not in your report that you've</b></p> <p>5 <b>generated?</b></p> <p>6 A. Not that I can think of. I think we've</p> <p>7 covered it.</p> <p>8 MR. PURDY: Does anybody have any questions</p> <p>9 for Mr. Poye?</p> <p>10 MR. COSMICH: I do.</p> <p>11 MR. PURDY: You do. I have -- well, let me</p> <p>12 just make a statement now -- I can do this at the end</p> <p>13 too, but I just want to make sure -- I don't think</p> <p>14 anybody will have a problem with this.</p> <p>15 But I want to make sure at trial I will ask</p> <p>16 Dr. Longo about this -- the history of the QC and his</p> <p>17 knowledge and my apparent understanding -- and I don't</p> <p>18 want to speak for Dr. Longo -- that he did not know</p> <p>19 that this was a QC sample. I just want to make that</p> <p>20 clear that I intend to bring that up with him at trial</p> <p>21 and probably on direct examination. I don't think</p> <p>22 another deposition is necessary, but I just want to</p> <p>23 make everybody aware of that.</p> <p>24 MR. COSMICH: Well, I know he wasn't aware of</p> <p>25 it. I thought he was trying to figure it out is all I</p>

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<p style="text-align: right;">Page 126</p> <p>1 was saying.</p> <p>2 MR. PURDY: No, no. I know. I know. But I</p> <p>3 just don't want anybody to think, when I go in there on</p> <p>4 direct, that someone makes a Kennemur objection that</p> <p>5 that opinion wasn't disclosed. I totally intend to --</p> <p>6 and I'll be very candid to tell the story of how, you</p> <p>7 know, he was given a QC, didn't know it, and passed the</p> <p>8 test and all that. But you guys get it.</p> <p>9 But go ahead. That's all I have for Mr. Poye</p> <p>10 today.</p> <p>11 MR. COSMICH: You're just finding out. It</p> <p>12 would have been hard for you to disclose it at the</p> <p>13 time.</p> <p>14</p> <p>15 EXAMINATION</p> <p>16 BY MR. COSMICH:</p> <p>17 Q. Mr. Poye, I've got a few questions for you.</p> <p>18 Earlier you were asked about whether or not</p> <p>19 you had any knowledge of any other experts testing Old</p> <p>20 Spice for asbestos in talc.</p> <p>21 Do you recall that?</p> <p>22 A. I do.</p> <p>23 Q. Do you recall, at the request of Simon</p> <p>24 Greenstone, sending one of the Old Spice samples to a</p> <p>25 Mr. Mlekush?</p>	<p style="text-align: right;">Page 128</p> <p>1 this chrysotile, at the level he claims it, actually</p> <p>2 exists; right?</p> <p>3 A. Correct.</p> <p>4 Q. Now, you were also provided with and your lab</p> <p>5 reviewed the actual PLM photos of what Dr. Longo claims</p> <p>6 to be chrysotile in these samples, weren't you?</p> <p>7 A. Yes, I was.</p> <p>8 Q. Do you agree that the photos that you were</p> <p>9 provided represent chrysotile from those Old Spice</p> <p>10 samples?</p> <p>11 A. No, I do not. As a matter of fact, I asked</p> <p>12 our PLM managers to review all those photos, and I can</p> <p>13 say conclusively that he did not agree with a single</p> <p>14 one of the calls that was made.</p> <p>15 Q. And why was that?</p> <p>16 A. Just based on the color, the RIs, refractive</p> <p>17 indices, of the materials did not match what they</p> <p>18 should have been in the 1550 RI fluid that they were</p> <p>19 purported to be taken in.</p> <p>20 Q. Do you agree with the range of RIs cited by</p> <p>21 Dr. Longo as support for his finding of chrysotile in</p> <p>22 these products?</p> <p>23 A. No. The range of RIs that he reported is -- I</p> <p>24 remember going through that list and noticing that</p> <p>25 every single one exceeded the -- what would be</p>
<p style="text-align: right;">Page 127</p> <p>1 A. Yes, I do. Now that you mention it.</p> <p>2 Q. Okay. So that one just slipped your mind;</p> <p>3 right?</p> <p>4 A. Yes. That was -- I can't -- how long ago was</p> <p>5 that?</p> <p>6 Q. Back 2000 -- well, it was around Depoian, so</p> <p>7 2015, 2016?</p> <p>8 A. All right. Well, I'm not as embarrassed</p> <p>9 anymore.</p> <p>10 Q. Okay. You were asked some questions about</p> <p>11 your -- the budget per sample that your lab charged us</p> <p>12 to review these samples.</p> <p>13 Do you recall that?</p> <p>14 A. I do.</p> <p>15 Q. Did that budget -- who set that amount?</p> <p>16 A. I did.</p> <p>17 Q. Do you feel like that budget in any way</p> <p>18 impaired or restricted your lab's ability to adequately</p> <p>19 assess the samples that you analyzed?</p> <p>20 A. No, sir. At that pay level, I'm confident</p> <p>21 that we got to the right result.</p> <p>22 Q. You were asked some questions about</p> <p>23 Dr. Longo's chrysotile findings and you talked about --</p> <p>24 you know, a little bit about the lack of serpentine</p> <p>25 peaks on XRD and what you'd expect to find on TEM if</p>	<p style="text-align: right;">Page 129</p> <p>1 considered acceptable ranges for chrysotile by</p> <p>2 EPA/600/R-93/116.</p> <p>3 Q. In your opinion, what do those photos that</p> <p>4 Dr. Longo claims is chrysotile from that -- from his</p> <p>5 PLM analysis, what are those structures?</p> <p>6 A. The edge of talc plates.</p> <p>7 Q. And as far as any literature, supporting</p> <p>8 documentation, photos, did you provide all of the</p> <p>9 support for those opinions in your reliance material?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Last question. Mr. Poye, if someone were to</p> <p>12 take the report that you rendered on the last five</p> <p>13 samples -- I shouldn't have said one last question.</p> <p>14 If someone were to take the report that you've</p> <p>15 rendered on the last five samples and presented it as</p> <p>16 support that you found asbestiform tremolite in those</p> <p>17 samples, would that be accurate?</p> <p>18 MR. PURDY: Just vague and ambiguous as to</p> <p>19 "asbestiform."</p> <p>20 THE DEPONENT: No, that wouldn't be -- that</p> <p>21 would not necessarily be accurate, no.</p> <p>22 BY MR. COSMICH:</p> <p>23 Q. Okay. In your opinion, what you found are</p> <p>24 actually non-asbestiform structures; correct?</p> <p>25 A. Based on the aspect ratios of all four</p>


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<p style="text-align: right;">Page 130</p> <p>1 structures detected in those five samples that we are</p> <p>2 discussing, in my opinion, I believe all four of those</p> <p>3 structures to be cleavage fragments. Although they</p> <p>4 meet the counting criteria under AHERA, and therefore,</p> <p>5 to follow the method, must be recorded as regulated</p> <p>6 asbestos structures.</p> <p>7 <b>Q. And with respect to the number of samples that</b></p> <p>8 <b>you've actually reviewed out of the 21, were any</b></p> <p>9 <b>samples excluded because even Dr. Longo found them to</b></p> <p>10 <b>be negative?</b></p> <p>11 A. Yes. I -- that was one of the criteria, as I</p> <p>12 stated earlier, that we purposefully selected the</p> <p>13 samples that had come back positive by MAS and excluded</p> <p>14 samples that Dr. Longo was unable to detect asbestos.</p> <p>15 <b>Q. Those are all the questions I have for you</b></p> <p>16 <b>right now. Thank you, Mr. Poye.</b></p> <p>17 A. Thank you.</p> <p>18 MR. PURDY: Just a couple clean-ups on those.</p> <p>19</p> <p>20 FURTHER EXAMINATION</p> <p>21 BY MR. PURDY:</p> <p>22 <b>Q. I thought you told me earlier you selected</b></p> <p>23 <b>those five because they had the most asbestos. What I</b></p> <p>24 <b>thought I just heard you say was those are the five</b></p> <p>25 <b>that only had asbestos. What is it?</b></p>	<p style="text-align: right;">Page 132</p> <p>1 A. As a commercial lab, I'm kind of presented</p> <p>2 with a general budget and what we can do for that</p> <p>3 budget, and that's what we all agreed, based on, as</p> <p>4 stated, again, Dr. Longo's results, my experience with</p> <p>5 those samples, and Mr. Cosmich, yes. He was involved</p> <p>6 in the decision, yes.</p> <p>7 <b>Q. Yeah. My point is if Old Spice had more money</b></p> <p>8 <b>and the budget was higher and they said test all</b></p> <p>9 <b>samples, you wouldn't have said no, would you?</b></p> <p>10 A. No, I certainly would not have.</p> <p>11 <b>Q. Okay.</b></p> <p>12 <b>All right. And then Mr. Cosmich asked you</b></p> <p>13 <b>what if someone took your results and talked about what</b></p> <p>14 <b>you found to say there was asbestiform or regulated</b></p> <p>15 <b>asbestos or cleavage fragments. Irrespective of what</b></p> <p>16 <b>we want to call them, Mr. Poye, do you agree that you</b></p> <p>17 <b>identified, took pictures of, and reported regulated</b></p> <p>18 <b>asbestos fibers in Old Spice talcum powder?</b></p> <p>19 A. Per the method, yes, sir.</p> <p>20 <b>Q. And you're not going to opine as to whether or</b></p> <p>21 <b>not those fibers, whether we call them AHERA fibers,</b></p> <p>22 <b>cleavage fragments, regulated asbestos, asbestiform, or</b></p> <p>23 <b>non-asbestiform, you're not going to weigh in on</b></p> <p>24 <b>whether those do or do not cause disease; true?</b></p> <p>25 A. That is correct. I am not a MD.</p>
<p style="text-align: right;">Page 131</p> <p>1 A. No, sir. What I said was some of the excluded</p> <p>2 not analyzed were chose -- or I should better say not</p> <p>3 recommended to be analyzed by me because Dr. Longo</p> <p>4 failed to find asbestos in them. We focused our</p> <p>5 research on the five samples that were positive and, as</p> <p>6 an additional criteria, the five that had higher</p> <p>7 concentrations of the ones that he found.</p> <p>8 <b>Q. All right. So more than five had asbestos,</b></p> <p>9 <b>but those five had the most in terms of concentration?</b></p> <p>10 A. That's my recollection, yes, sir.</p> <p>11 <b>Q. Now, have you ever analyzed a sample in which</b></p> <p>12 <b>Dr. Longo did not find countable structures but you</b></p> <p>13 <b>found countable structures?</b></p> <p>14 A. I can't recall as I sit here. It's certainly</p> <p>15 possible, yes.</p> <p>16 <b>Q. Why not in this case then, if -- you know, if</b></p> <p>17 <b>we wanted to answer the question whether or not there</b></p> <p>18 <b>was countable structures in there, why not test the</b></p> <p>19 <b>ones that Dr. Longo tested and did not find structures?</b></p> <p>20 A. I guess the truthful answer to that is I'm not</p> <p>21 the one paying the bill. I'd be more than happy to</p> <p>22 test all 20 of them.</p> <p>23 <b>Q. That's my point. So it wasn't your decision</b></p> <p>24 <b>to only test a certain amount; that was your client's</b></p> <p>25 <b>decision; was it not?</b></p>	<p style="text-align: right;">Page 133</p> <p>1 <b>Q. Okay.</b></p> <p>2 MR. PURDY: That's all I have.</p> <p>3 MR. COSMICH: Nothing here. Bob?</p> <p>4 MR. BERKES: Nope. Nothing here.</p> <p>5 MR. PURDY: Okay. Let's go -- well, let's</p> <p>6 stay on the record real quick. We'll do a quick stip.</p> <p>7 We'll stipulate that the court reporter can be</p> <p>8 relieved of her custodial duties under the Code.</p> <p>9 Original of the transcript will be sent to my</p> <p>10 office as the noticing party. We'll maintain custody</p> <p>11 of the original.</p> <p>12 We'll give the copy that Mr. Cosmich orders --</p> <p>13 I assume you're going to order a copy, John?</p> <p>14 MR. COSMICH: Yes, sir.</p> <p>15 MR. PURDY: He'll provide his copy or a copy</p> <p>16 to Mr. Poye to read, review, make any changes</p> <p>17 necessary, notify all parties not later than -- let's</p> <p>18 just say 60 days from today is going to give us plenty</p> <p>19 of time. If something happens earlier, we'll talk</p> <p>20 about it.</p> <p>21 And we'll maintain custody of the original.</p> <p>22 To the extent it's not available, then we agree to use</p> <p>23 a certified copy in lieu of the original.</p> <p>24 MR. COSMICH: So stipulated.</p> <p>25 MR. PURDY: All right. Let's go off the</p>

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1	record.	1	STATE OF CALIFORNIA )
2			)
3	(Whereupon, at the hour of	2	COUNTY OF LOS ANGELES )
4	12:44 p.m., the proceedings	3	
5	were concluded.)	4	I, Paige I. Hutchinson, Certified Shorthand
6	-o0o-	5	Reporter, No. 13459, do hereby certify:
7		6	That prior to being examined, the witness
8		7	named in the foregoing deposition was by me duly
9		8	sworn to testify to the truth, the whole truth, and
10		9	nothing but the truth;
11		10	That said deposition was taken before me
12		11	remotely via videoconference; and thereafter reduced to
13		12	print by means of computer-aided transcription; and the
14		13	same is a true, correct, and complete transcript of
15		14	said proceedings taken at that time, to the best of my
16		15	ability.
17		16	I further certify that I am not interested in
18		17	the outcome of the action.
19		18	Witness my hand this, Wednesday, September 29,
20		19	2020.
21		20	
22		21	
23		22	
24		23	Paige I. Hutchinson, CA CSR No. 13459,
25		24	TX CSR No. 11222, WA No. 3336
25		25	

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1	DECLARATION UNDER PENALTY OF PERJURY	1	CORRECTION LIST
2		2	
3			Page/Line From To
4	I, LEE W. POYE, do hereby certify under	3	_____
5	penalty of perjury that I have read the foregoing	4	_____
6	transcript of my deposition taken on	5	_____
7	September 25, 2020; that I have made such corrections	6	_____
8	as appear noted herein in ink, initialed by me; that my	7	_____
9	testimony as contained herein, as corrected, is true	8	_____
10	and correct.	9	_____
11		10	_____
12	DATED this ____ day of _____, 2020,	11	_____
13	at _____, California.	12	_____
14		13	_____
15		14	_____
16		15	_____
17		16	_____
18		17	_____
19		18	_____
20	_____	19	_____
21	LEE W. POYE	20	_____
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		25	_____